NEWSWEEK
25 JANUARY 1982

The CIA's Double Standard

MY TURN/FRANK SNEPP

The CIA disclaims any responsibility for Edwin Wilson and Frank Terpil, the two ex-agents who are now busily training and arming Libyan terrorists. But the truth is the CIA and the Justice Department have long had the legal means to put these shady dealers out of business.

Wilson, indicted in 1980 and '81 for selling explosives and murderous skills to the Kaddafi regime, joined the CIA in the early '50s, at a time when all agency employees and alumni were solemnly sworn never to assert any proprietary "claim" to what they learned on the job and never "to divulge, publish or reveal by any other means ... classified information, intelligence or knowledge" without official approval. The same basic covenant was in effect when Terpil signed on in the early '60s.

Two years ago, in a ruling against me, the Supreme Court upheld the legality of these contracts. Though my case involved the unauthorized publication of a book about CIA activities, the contracts themselves make no distinction between disclosure in print and revelation by "sales pitch." Nor are their strictures limited to secrets or even knowledge gained *during* employment. According to a 1977 CIA regulation "subjects deemed to be of official Agency interest [and hence subject to pre-release approval] include, but are not limited to, current and former Agency activities, foreign intelligence and foreign political, economic, scientific, technical, military, sociological and geographical matters, including foreign aspects of international terrorist activity ..." A later CIA directive generously exempts "topics that are totally unrelated to intelligence matters, such as the manuscript of a cookbook, [or] a treatise on gardening," but warns of "gray areas" and urges signatories to err on the side of caution by letting the CIA pre-screen all utterances that might be of official concern.

Changed Rules: Since I had sidestepped CIA scrutiny altogether, the Supreme Court decided I had broken my contract. For the same reason it found me guilty of having violated an "implicit obligation of trust." Normally this commercial-law concept is invoked only against people who sell their employers' trade secrets to competitors. But in my case the rules were changed. I was slapped with the standard penalty for a "breach of trust"—forfeiture of all profits—and was ordered to submit to CIA censorship in the future, even though the government had never once accused me of publishing *anything* confidential.

Terpil and Wilson clearly have done no less than I. If my book was a violation of implied and explicit covenants, so is their unfettered assistance to the Libyans.

The two also are guilty of one other offense that figured in the government's case against me. To substantiate its claim that my book had damaged the nation's security, the Justice Department argued that any such unauthorized release of intelligence-related material can undermine confidence in the CIA's security procedures and can thus frighten off "sources" who might otherwise be cooperative. The Supreme Court agreed, declaring that the "appearance of confidentiality" is often as essential to our security as confidentiality itself.

Why hasn't the agency used its legal powers to stop former agents who work for Kaddafi?

By nuzzling up to Kaddafi, Wilson and Terpil have most certainly imperiled the "appearance of confidentiality" and have discomfited intelligence sources. Why, then, weren't they sued long ago for breach of contract and trust? Part of the answer undoubtedly lies in the influence and interests of the CIA's "old boy" network. Not surprisingly, Wilson and Terpil aren't its only charter members who are out peddling "Company" know-how to unauthorized consumers. Former CIA topsiders Richard Helms, Henry Knoche, Vernon Walters and Theodore Shackley are all involved in business consultancies that cash in on what they learned while on the agency's payroll. Onetime CIA security chief Robert Gambino has retired to train private security guards, and scores of former field operatives have discarded cloak and dagger to pursue business interests in countries where they were once assigned. All of these agents-turned-entrepreneurs are guilty of my "transgression"—trading on knowledge that the government claims isn't ours to exploit. But because, as a group, they command more political clout than I, they've escaped prosecution.

Moreover, because of the muzziness of the employment contracts, they have been able to argue that they face no constraints on their business activities. Helms has commented that it would be "against the American tradition" for the government to attempt to impose such strictures.

Precedent: In fairness to him and his fellow scofflaws, the employment contracts are not models of clarity. They have been recast at least six times since the CIA's founding and have never been consistently enforced. So it's understandable that a signatory might misconstrue his "obligations."

Then too, there is the legitimate question: should Pentagon and State Department officials be permitted to transfer their professional expertise to the private sector while CIA veterans are forbidden to do so?

That last issue (like so many others) was, in fact, resolved by the Supreme Court's ruling against me. Under the principles the Court embraced, anybody who assumes a position of trust in the government thereby exposes himself to permanent official curbs on his speech and conduct, regardless of whether he signs a contract to this effect.

What remains to be seen is whether the Justice Department will now use the power it won in my case to punish and deter the likes of Wilson and Terpil. If it does, it will admittedly set a precedent for similar suits against Helms, Knoche, Henry Kissinger and other powerful former bureaucrats who are engaged in more benign business ventures arising from their government service. But if it doesn't—out of deference to Helms and Co.—it will make a mockery of the arguments marshaled against me and, more important, forfeit a chance to deliver a sobering object lesson to those Federal retirees who would betray their public trust by marketing their professional skills to terrorists and disreputable foreign governments.

Snepp, a former CIA analyst, lost a suit to the Federal government for publishing an unauthorized book on the fall of Saigon.

ARTICLE APPEARED
ON PAGE 20

TIME
11 January 1982

Perils and Promise

When the White House speechwriters crafted Ronald Reagan's Christmas message, they tried desperately to get away from Charles Dickens' hoary label for any era: "It was the best of times; it was the worst of times." But they failed, drawn again to that time-worn language to describe the maddening contradictions of the world today. And indeed, Dickens' words may be especially apt for 1982, a year with no poetry in its sound, no numerical magic. It is a year that a number of scholars and statesmen are already predicting will be momentous for the industrial democracies of the West, a time combining peril and opportunity.

The perils are obvious. The free world's alliances are weakened and some of its economies faltering; the adversaries are more threatening and the have-nots more demanding. Military power and its illicit offspring, terrorism, threaten to break all restraints. Firm decisions elude American strategists on nuclear security. Recession continues and worries deepen over the impact of budget and tax cuts. Decline in the auto, steel and building industries spills over to small business, farming and credit institutions. The accumulated stress spells fear.

Zbigniew Brzezinski, National Security Adviser to Jimmy Carter, pulled his trench coat around him in Washington the other morning and said, "The foreign policy crisis that I predicted for late winter is starting to develop by early winter." He cited four areas—Poland, the Middle East, Central America and China—that have reached critical mass against a dispiriting background of European neutralism, Third World alienation, frustrations about nuclear arms and indecision within the President's council about what we should do.

Brzezinski's counterpart from the Nixon-Ford years, Henry Kissinger, sees the next months as one of the most critical junctures in postwar American history, ranking with the 1956 Suez and Hungarian crises and the building of the Berlin Wall in 1961. "It is almost exactly a generation since the great creative acts of the immediate postwar years were put in place," says Kissinger, referring to such landmarks as the Marshall Plan and the formation of the Atlantic Alliance. The key tests today, in Kissinger's view, are for the nation to deepen values and transcend materialism at home, and to meld firmness and conciliation abroad in wise portions. Failing that, he says, "we can become irrelevant in just a few months' time."

Public television's Scholar-Author Ben Wattenberg, a senior fellow at the American Enterprise Institute, declares: "Poland is one of those great events that happen once in a generation to unmask the truth." Like former CIA Director and Ambassador to Iran Richard Helms, Wattenberg sees much of the world struggle transformed into a propaganda war of unprecedented scope, in which perceptions of strength and weakness—conveyed in words and spirit—are critical elements. Both Helms and Wattenberg would have the President muster academics, peace marchers, public relations experts, labor groups, corporations and churches in a worldwide educational effort to show that the Communist system is a brutal failure.

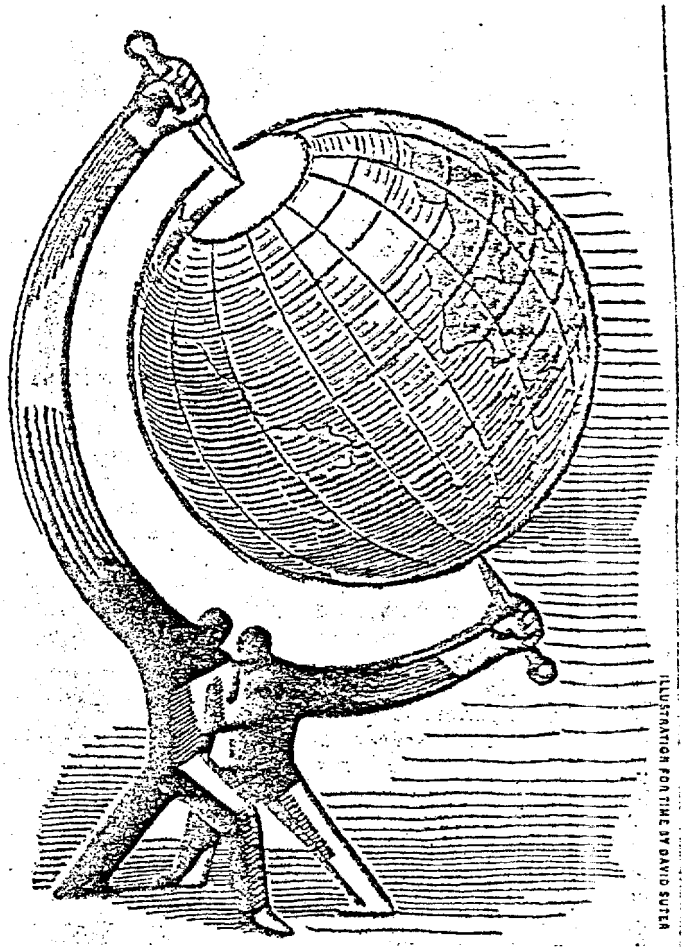

ILLUSTRATION FOR TIME BY DAVID SUTER

"Turn the bully pulpit into a bully spotlight," says Wattenberg, who, with Kissinger, believes that the U.S. is at the end of an era. "I've thought about it a great deal," Wattenberg says. "Perhaps a new era is defined best when people begin to agree

CONTINUED

STAT

RADIO TV REPORTS,

4701 WILLARD AVENUE, CHEVY CHASE, MARYLAND 20015 656-40

FOR PUBLIC AFFAIRS STAFF

PROGRAM After-Hours STAT

DATE January 7, 1982 11:30 PM CITY

SUBJECT Interview with Admiral Stansfield T

GORDON PETERSON: Please welcome to After Hours now, in the Channel 9 newsroom, Admiral Stansfield Turner, former Rhodes Scholar, former Director of the CIA under President Jimmy Carter.

Bad luck for you today.

ADMIRAL STANSFIELD TURNER: Why is that?

PETERSON: A few minutes before we started this program, I was in a bookstore looking for something else, and I came across a book by Dr. Ray Cline, former Deputy Director of the Central Intelligence Agency. He does not treat you well in this book, "The CIA Under Reagan, Bush and Casey." He doesn't even mention your name in the title.

TOM BRADEN: There's a lot about him in the back.

PETERSON: He says -- you're a nice fellow, is what he says. You had an excellent record, but in practice you showed little of the skill in interpersonal relations necessary for an effective leader of the CIA's clandestine services or its analytical staff.

Do you feel hurt by this?

ADMIRAL TURNER: No, I don't feel hurt, considering the source. Mr. Cline is a nice man. He was a good intelligence officer. He's just way out of date, out of touch, and only in touch with a lot of old-timers who are also out of date.

PETERSON: Well, he alleges in that book that the morale was going this way under George Bush. He says that maybe President

ARTICLE APPEARED
ON PAGE 27

THE ATLANTIC MONTHLY
January 1982

THE KENNEDY IMPRISO

1. THE PRISONER OF CHARIS

BY GARRY WILLS

PRESIDENT EISENHOWER'S CRIME, IN THE EYES OF many of his critics, was a government by committee. Committees are not creative. They stifle originality, impose conformity. Eisenhower had let problems go untended in order to preserve the country's (and his own) tranquillity. An "existential" leader, as Norman Mailer put it, would dare to go outside channels, to confront the unexpected with a resourceful poise of improvisation.

Arthur Schlesinger and Theodore Sorensen, official historians of John F. Kennedy's presidency, portray their leader as just the "existential" hero Mailer pined for. His first job was to dismantle the protective procedures Eisenhower had woven around the presidency. Kennedy wanted to be exposed, not shielded—out on the battlements, scanning all horizons, not seated in his chamber sifting documents. His ideal was the Franklin Roosevelt celebrated by Schlesinger and Richard Neustadt. Neustadt's 1960 book, *Presidential Power*, became the "hot" item of the transition. In it, Roosevelt and Eisenhower were presented in sharp contrast—Roosevelt as a man free from procedural entanglements, Eisenhower as the slave of them. Kennedy, to imitate Roosevelt, had to become a sort of Eisenhower in reverse.

* * * * * *

FRANKLIN ROOSEVELT HIMSELF COULD NOT HAVE been a post-Rooseveltian President. Those who wanted to apply his techniques to a world that those techniques had shaped were mistaking their own and Roosevelt's historic moments. Neustadt tried to teach Kennedy how Roosevelt had circumvented the bureaucracy. But Roosevelt did not circumvent the bureaucracy; he invented it in the first place.

Presidents since Kennedy have conceived their task as a David-and-Goliath struggle with the vast machinery of government. Control of all those cogs and wheels is impossible—they would just chew up the President. So a series of raids from the outside is called for, hit-and-run tactics, guerrilla government. But Roosevelt had been Goliath, not David, proliferating agencies outward from him, not sending raiders against them. The initiator of programs is not a prisoner of their past record, of precedent and procedure. He controls them by setting their goals, choosing their first personnel, presiding over their authorization. All new systems have energy and focus, from the very effort that brought them into being.

The very pr
state and warf
not have to indu
cepted. The Depression was real enough; Congress begged the President for *more* bills during the busy first three months of his administration. People yearned for him to do something, anything, to meet the crisis—and the demands of that crisis, rather than any ideological program, dictated what measures he took. Some of these were makeshift, some mistaken, some illegal; but all were aimed, supported, desired. Spontaneity and resourcefulness were given a free hand—but only to create measures soon translated into programs with set procedures.

There was the same virtue of definition in war measures. Roosevelt was free to override not only ordinary procedures but basic rights. The public supported the most irregular means of guaranteeing national security—a secret decision like that to build nuclear weapons, or an arbitrary punishment like the imprisonment of Japanese-Americans, or unilateral fiat like the demand for unconditional surrender. The Manhattan Project was a spectacular success because, in time of peril, the President could commandeer men and talent, site and materials; he could assign tasks, cloak the whole matter in secrecy, and use the weapons without consulting the citizenry. In all these ways, war gave Roosevelt quasi-dictatorial powers—powers most Americans would shudder to see granted in peacetime. After the war, the spontaneous and arbitrary yielded to settled ways again. Security procedures, for instance, may have been unfair after the war, but they were not arbitrary and secret—Congress reviewed and regularized them. If agencies created in wartime were to justify their continued existence, they had to do so by standards different from those applied at their inception. The one great exception was the CIA, whose funding was kept unconstitutionally secret, and whose mandate had a wartime character. It is no accident that the presidential itch to use charismatic power to overthrow foreign governments, or spy on Americans, or come up with criminal weapons, found its readiest outlet in the CIA's activities.

CONTINUED

MILITARY SCIENCE & TECHNOLOGY
VOLUME 1, NO. 5
1981

INTELLIGENCE

Intelligence Redux: *Kissinger's Coup*

by Ernest Volkman

Early in 1969, not long after he had assumed the post of National Security Adviser to President Nixon, a displeased Henry Kissinger sat in his White House office reading a current CIA National Intelligence Estimate (NIE). With obvious disgust, Kissinger finished reading the document, and in large letters, wrote across the top of it, "Piece of crap!"

Of such little events are major controversies often made, and that angry little scrawl by Kissinger turned out to be only the opening shot in what finally became a bloody bureaucratic battle in which American intelligence was the battleground. Ultimately, dozens of careers were ruined, the intelligence community became bitterly politicized, and American intelligence suffered an unprecedented crisis of confidence. Indeed, the effects of that battle are still being felt today in the American intelligence community, which has never quite recovered.

In this series of articles on the problems of American estimative intelligence, we have taken some pains to point out the debilitating effect of politics (and its handmaiden, bureaucratic politics) on the intelligence process. From the first Soviet atomic bomb test through the Cuban Missile Crisis to the great anti-ballistic missile debate of the 1960s, the invidious effect of politics can be seen again and again. It is possible from this, in fact, to postulate a **First Law of Intelligence: Where Politics Tread, Intelligence Becomes Oatmeal.** Not very inspiring, perhaps, but it makes the point.

Which brings us to Henry Kissinger—or, more accurately, a period during which American intelligence became so politicized, it can scarcely be said it even functioned, certainly not as it was designed to do. In a sense of course, the politicization was inevitable, given the fact that from the first moment he assumed office, Kissinger sought (and very shortly accomplished) total domination of American strategic policy, mainly because he wore two hats—chief security adviser to the President and chief progenitor of American foreign policy.

That is the sort of anomaly guaranteed to cause trouble, and there was trouble very early on. First, there was the problem of the Nixon administration's stated goal of an "era of negotiations," meaning that both Nixon and Kissinger had set strategic arms control agreements, among other bilateral goals, as the first foreign policy priority. There was an intelligence implication in such a policy, since any agreements had to carry a vital prerequisite: verification. And verification itself was a political code word meaning that the American military and certain members of Congress would not buy any bilateral agreement without a firm guarantee that we would be able to detect any cheating by the Soviet Union. Was the CIA up to this task?

Of course, argued CIA Director Richard Helms, but he was disquieted by the question. An old hand at Washington infighting, Helms was perfectly aware of the fact that the last thing he wanted the agency to get involved in was the political minefield of verification. As Helms realized, it was a no-win proposition: If the CIA agreed that verification was feasible, then it risked angering congressional conservatives who felt that the Soviet Union would never live up to any arms agreement. On the other hand, if the CIA dragged its feet on the verification question, then it risked incurring the wrath of Kissinger (and by extension, his boss). The CIA already felt uneasy with Kissinger, who [illegible] wanting to create his own intelligence organization more subject to his ▶